TESTIMONY OF EDDY W. HARTENSTEIN
President, DIRECTV, Inc.
before the
Senate Committee on Commerce, Science, and Transportation
February 23, 1999

I want to thank you, Mr. Chairman, for introducing S. 303, the Satellite Television Act of 1999. I also want to thank Senator Burns, Chairman of the Subcommittee on Communications, for joining you in introducing that bill. We would urge your colleagues to cosponsor the bill.

The issues we are discussing this morning are of extreme importance to the more than 10 million Americans who subscribe to satellite TV and I appreciate the opportunity to share our views.

DIRECTV® launched its service about four and one-half years ago. From day one, we have been dedicated to providing consumers with a compelling multichannel video alternative to incumbent cable television operators. DIRECTV today remains dedicated to that same goal.

DIRECTV has experienced strong growth since its inception, and is the leading provider of direct broadcast satellite ("DBS") service in the United States with more than 4.6 million subscribers. Today, one in every 22 households in the United States has DIRECTV.

The Federal Communications Commission ("FCC") recently determined that DBS represents "the single largest competitor to cable operators."[1] Yet, as the FCC

---

[1] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* CS Dkt. No. 98-102, Fifth Annual Report, ¶ 62 (rel. Dec. 23, 1998).

reported, 85% of the households subscribing to multichannel video receive service from their local franchised cable operator.[2] We are targeting every one of those cable subscribers to convince them that DIRECTV offers a superior product at a competitive price.

Unfortunately, our efforts to compete aggressively with cable, and to provide the kind of competition that Congress wants us to provide, are being hampered by a number of regulatory and statutory obstacles. Several of those obstacles are found in the law we're discussing today, the Satellite Home Viewer Act.

Much controversy has surrounded the Satellite Home Viewer Act's "white area" restriction on the delivery of distant network signals. At the outset, it is important to note that consumers would prefer to receive their local news, sports and weather, as provided by their local network affiliate. Thus, DIRECTV strongly believes that the winning combination for consumers, network affiliates and DBS providers is the free receipt of off-air signals via the use of conventional rooftop antennas. Stated simply, DIRECTV's long-term objective is to re-populate American homes with rooftop antennas and re-introduce consumers to one of the last truly free, high-quality entertainment opportunities. This fundamental philosophy is reflected in the design of DIRECTV's receiving equipment, which facilitates the seamless integration of off-air broadcast signals – analog signals today, and digital signals in the future as broadcasters convert to digital. In addition, several manufacturers offer dishes with embedded broadcast antennas.

---

[2] *Id. Appendix C, Table C-1.*

Regardless of DIRECTV's success in promoting the off-air solution, there will remain some limited number of consumers that cannot receive a clear picture using an off-air antenna and who must rely upon the ability to receive a distant network signal in order to access this critical segment of programming. DIRECTV is sensitive to the concerns of local network affiliates that led initially to the enactment of the "white area" restriction, *i.e*., a desire to preserve the exclusivity of their programming within local markets so as to maintain their ratings, and in turn, their advertising rates. It has become increasingly clear, however, that the current statutory solution to protecting the local broadcasters' interests has resulted in significant frustration and confusion for satellite carriers and local network affiliates. The loser, unfortunately, has been satellite consumers. It is difficult under any circumstance to explain to consumers why they should not be able to get programming for which they are willing to pay. When that denial of programming is based on the false assumption that clear off-air signals are available, confusion turns to frustration and anger. I know all of you have been hearing from many of these frustrated consumers.

We believe that the only way to resolve the white area concerns, and to put this matter behind us, is for Congress to amend the Satellite Home Viewer Act so as to modify the white area restriction. And while there may be a reasonable debate about the extent and nature of the modification required, we would urge Congress in considering this important issue to be guided by three overriding objectives.

First, to perhaps state the obvious, the law must be fair -- that is, it must strike a reasonable balance between the legitimate economic interests of satellite carriers and

network affiliates. Second, it must be simplified -- subscriber eligibility to receive network programming must be both easily understood by consumers and easily applied and monitored by satellite carriers and broadcasters. Third, and most importantly, it must be pro-consumer -- the law must recognize the right of all consumers to receive network programming, ideally as delivered over-the-air by their local network affiliate, but if that is not an option, then through a satellite-delivered distant network signal. That was clearly Congress' intent when the Satellite Home Viewer Act was first enacted in 1988.

Many of us had hoped that the FCC's recent rulemaking proceeding would substantially resolve the white area problems. Unfortunately, in spite of the FCC's well-intentioned efforts, the Order it adopted does not resolve these issues. Ultimately, the FCC determined that it does not have sufficient authority under the Satellite Home Viewer Act to provide the type of pro-competitive, pro-consumer solution this critical issue requires. Therefore, as the FCC itself indicated, it's up to Congress to amend the Satellite Home Viewer Act so as to create a fair, simple and pro-consumer approach to this issue.

First, Congress should direct the FCC to set a signal reception standard solely for the Satellite Home Viewer Act that will ensure that households that cannot receive a clear over-the-air network signal using a conventional rooftop antenna can receive distant network signals via satellite. The FCC, in its Order, admitted that the existing Grade B signal intensity standard was never intended to be used to evaluate the quality of the television picture received by an individual household. Rather the current

standard was established in the 1950s for what the FCC called "the very different and difficult problem"[3] of creating station service areas and determining the proper allocation of channels in the early days of television. In other words, the standard was designed to prevent the signal of one station from interfering with the signal of an adjacent station, not to determine picture quality at a consumer's home.

We need a signal intensity standard specifically designed to identify households that cannot receive a clear picture on the television set in their living room or their bedroom. That standard should relate to what consumers in 1999 expect of their television picture and should take into account such factors as ghosting (also known as multipathing), signal interference, environmental noise, and line loss due to the use of splitters. The FCC concedes that a better standard could be developed for identifying unserved households. Sufficient engineering expertise, both at the FCC and in industry, exists to develop such a standard. All that is required is a clear directive from Congress.

Second, Congress should direct the FCC to establish a point-to-point predictive model that will enable a consumer to know with a high degree of certainty whether or not he or she will be able to receive a clear local network signal over-the-air using a conventional rooftop antenna. It will never be realistic to expect satellite carriers to spend $150 or more to take a signal intensity measurement at the household of every subscriber who wishes to pay a few dollars a month to receive distant network signals.

---

[3] *In the Matter of Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, Part 73 Definition and Measurement of Signals of Grade B Intensity,* CS Dkt. No. 98-201, Report and Order, ¶ 33 (rel. Feb. 2, 1999).

The economics simply don't work. Therefore, satellite carriers must be able to rely on models that predict the strength of local signals at an individual household.

For consumers similarly to rely on the results of a predictive model, however, the results must be given presumptive legal effect. To have that effect, the burden and cost of any challenge should be borne by the party challenging the presumption. Unless these changes are made in the law, we will continue to see large numbers of subscribers' eligibility randomly challenged by broadcasters, leaving the satellite carrier with no practical recourse other than to terminate service. We need to create a situation where broadcasters, satellite carriers, and, most importantly, consumers agree that the predictions are accurate and should be accepted as a final determination of eligibility.

Third, the group of consumers who were receiving distant network signals via satellite at the time of the Miami court ruling[4] should not be penalized. The bill introduced by Senators McCain and Burns would protect current subscribers' right to receive distant network signals via satellite unless it would cause "projected loss of audience and revenue of such a magnitude as to cause material harm to the viability of local stations." Since the number of subscribers we are talking about constitutes no more than one percent of the households in most markets, clearly retention of service by these subscribers would have a negligible financial impact on the network affiliates.

Mr. Chairman, I hope you won't mind if I quote from the letter you sent to your Senate colleagues last week:

This problem [ ] occurs at an unfortunate time in terms of furthering

---

[4] *CBS Broadcasting Inc. v. PrimeTime 24 Joint Venture, No. 96-3650-CIV-NESBITT (S.D. Fla.).*

> multichannel video competition. Satellite TV service has begun to emerge as the best competitor to monopoly cable television service. . . . The last thing the public interest needs is to have cable TV's biggest competitive threat dealt a customer service setback of this magnitude.

Mr. Chairman, you are absolutely correct. Even before large numbers of subscribers have seen their distant network service terminated, we are seeing considerable marketplace confusion and disruption. We believe the right approach, both for consumers and for competition, is to allow current subscribers to retain service while ascertaining whether permitting them to do so will cause any material harm. In addition to serving the interests of consumers, this approach also will alleviate significant customer service and public relations problems for local broadcast affiliates and satellite carriers alike.

I believe the white area approach I have outlined addresses each of the three objectives I listed at the beginning of this discussion -- fairness, simplicity and assured access to network programming.

Let me turn briefly to other Satellite Home Viewer Act matters.

We are pleased to see in Senator Hatch's bill, S. 247, the elimination of the provision requiring a cable subscriber to drop his or her cable subscription and wait 90 days before he or she can subscribe to distant network signals. This aspect of the "unserved household" definition has no rational basis, is anticompetitive, and merely delays service to consumers. The elimination of this provision will have a positive impact on the marketing of DBS service.

Mr. Chairman, you, along with Senators Burns and Dorgan, led the fight to reverse the Copyright Office's decision to impose on satellite carriers copyright fees for

the retransmission of superstations and distant network signals that currently are as much as ten times those paid by cable operators. We are pleased to see a reduction in those rates included in Senator Hatch's bill. While even at these proposed reduced rates satellite carriers still would be paying significantly more than cable operators, we view this as a good faith effort to bring satellite's rates more in line with those paid by cable operators. We certainly hope that the copyright owners will accept the rates proposed by Senator Hatch.

Finally, much has been said about satellite carriers' ability to provide "local into local." Some have suggested that if Congress passes legislation permitting satellite carriers to retransmit local broadcast channels within the local market the white area problem will vanish. This simply is not so. Even if Congress passes the necessary legislation, satellite-delivered local signals at best will be available only in a limited number of television markets -- those with the very largest number of households – due to channel capacity limitations. And the number of cities that could be served by satellite would be reduced even further by the imposition of full must carry. As a result, the ability to deliver distant network signals to households that cannot receive over-the-air network signals will continue to be essential.

Let me conclude by saying that DIRECTV remains committed to working with the broadcast community and Congress to find quickly an appropriate pro-consumer resolution of the white area issue. We remain hopeful that such a solution can be implemented in time to mitigate the current confusion and disruption in the market, and to avert the anti-consumer and anti-competitive implications that will result from the

pending loss of service to satellite TV subscribers.

Thank you.